

## D.C. OFFICE OF PERSONNEL

## NOTICE OF PROPOSED RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01 *et seq.*) (2001), and Section 2 (b) of the Omnibus Public Safety Agency Reform Amendment Act of 2004 (the "Act"), effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-402 (b)) (2005 Supp.), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following proposed rules. The Act requires that the Fire Chief establish criteria for Career Service promotions to Battalion Fire Chief and Deputy Fire Chief that addresses the areas of education, experience, physical fitness, and psychological fitness. Accordingly, these rules would amend section 875 of Chapter 8, Career Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR), to make changes to the requirements for promotions to Battalion Fire Chief and Deputy Fire Chief in the Fire and Emergency Medical Services Department (FEMSD), as required under the Act. The criteria established, which shall become effective on October 1, 2007, are specified in sections 875.4 through 875.6 of the chapter. Additionally, section 807.1 (b) of the chapter, concerning the age requirements for appointment to a Firefighter position, is being amended to change the maximum age limit from twenty-nine (29) years to thirty-one (31) years; and section 870 of the chapter, concerning the processing of entry-level candidates for firefighter positions in the FEMSD, is being updated. Upon adoption, these rules will amend Chapter 8, Career Service, of Title of the DCMR, published at 30 DCR 2555 (May 27, 1983) and amended at 30 DCR 4608 (September 9, 1983), 31 DCR 2715 (June 1, 1984), 32 DCR 1857 (April 5, 1985), 32 DCR 2473 (May 3, 1985), 32 DCR 2953 (May 24, 1985) (errata), 33 DCR 4299 (July 18, 1986), 35 DCR 1087 (February 19, 1988), 36 DCR 6069 (August 25, 1989), 37 DCR 3952 (June 15, 1990), 37 DCR 7117 (November 9, 1990), 42 DCR 3520 (July 7, 1995), 45 DCR 451 (January 23, 1998), 45 DCR 1641 (March 20, 1998), 47 DCR 2419 (April 7, 2000), 48 DCR 8973 (September 28, 2001), 49 DCR 1859 (March 1, 2002), 49 DCR 6842 (July 19, 2002), 49 DCR 8368 (August 30, 2002), 49 DCR 9298 (October 11, 2002) (Errata), 51 DCR 9706 (October 15, 2004), and 51 DCR 10410 (November 12, 2004).

## CHAPTER 8

## CAREER SERVICE

*Chapter 8 of the D.C. Personnel Regulations is amended as follows:*

*Section 807.1 (b) is amended to read as follows:*

- 807.1 (b) For appointment to a Firefighter position, an applicant must have reached his or her nineteenth (19<sup>th</sup>) birthday, but must not have passed his or her thirty-first (31<sup>st</sup>) birthday as of the date of application;

*The heading of section 870 is changed from "Processing Entry-Level Candidates for Firefighter Positions" to "Processing Entry-Level Candidates for Firefighter/Emergency Medical Technician (EMT) and Firefighter/Paramedic Positions;" and the section is amended to read as follows:*

**870 PROCESSING ENTRY-LEVEL CANDIDATES FOR  
FIREFIGHTER/EMERGENCY MEDICAL TECHNICIAN (EMT) AND  
FIREFIGHTER/PARAMEDIC POSITIONS**

**870.1** For the purposes of this section, the following terms have the meaning ascribed:

**Certificate of Eligibles (Certificate)** – the list of candidates selected from a Register for consideration for appointment to a position.

**Disposition** – the final status of individuals considered for appointment from a Certificate, indicated on a Certificate of Eligibles by means of the coding system described in section 870.8 of this section.

**Firefighter/Emergency Medical Technician (EMT)** – an employee of the Fire and Emergency Medical Services Department (FEMSD) who is cross-trained as a Firefighter and an EMT.

**Firefighter/Paramedic** – an employee of the FEMSD who is cross-trained as a Firefighter and a Paramedic. The Term "Paramedic" includes EMT/Intermediate (EMT/I) and Basic Paramedic (EMT/P).

**Register** – a list of all individuals eligible for consideration for appointment to a position.

**Unassembled examination** – an examination that does not require a written test.

**870.2** Appropriate staff within the D.C. Office of Personnel will establish a Register of eligible candidates for the positions of Firefighter/EMT and Firefighter/Paramedic. Each Register will include the numerical rank, name, and social security number of all eligible candidates.

**870.3** Candidates on the Register will be eligible for appointment only if they successfully complete all the stages of the selection process.

**870.4** As specified in section 810 of this chapter, a Register may also be established by administering an entry-level examination to eligible candidates or, at the discretion of the Fire Chief, by unassembled examination for the purposes of hiring individuals for the position of Firefighter/Paramedic.

**870.5** Following the establishment of a Register, each candidate who passes the entry-level examination for Firefighter/EMT and Firefighter/Paramedic or is qualified by unassembled examination will be required to:

- (a) Take a physical abilities test (PAT) to assess his or her physical abilities to perform the duties of a Firefighter/EMT or Firefighter/Paramedic;
- (b) Undergo a background investigation to determine suitability for appointment; and
- (c) Be determined to be medically and psychologically qualified to perform in the position for which he or she is being considered.

870.6 Processing of candidates on a Register, and the responsibilities and authorities for each step, are as specified in this section.

870.7 Appropriate staff within the D.C. Office of Personnel will transmit a Certificate to the FEMSD. The Certificate will include a sufficient number of candidates to fill available vacancies, and the numerical rank, name, and social security number of qualified candidates on the Register. In the case of a Register established by written examination, the candidates will be listed on the Register in order of their position on the written examination. The D.C. 2000 Employment Application of the certified candidates will be transmitted along with the Certificate. The D.C. Office of Personnel will retain a copy of each D.C. 2000 Employment Application.

870.8 The D.C. Office of Personnel will transmit the Certificate and D.C. 2000 Employment Applications to the FEMSD Agency Recruiting Officer (ARO). The ARO will review the D.C. 2000 Employment Applications and indicate the final status of each candidate in the "Disposition" column of the Certificate, using the following codification system:

- (a) A: The candidate could not be contacted regarding availability for processing by means of the U.S. Postal Service; the mailings were returned to the ARO as undeliverable;
- (b) B: The candidate failed to respond to mailings regarding availability for processing; the mailings were not returned by the U.S. Postal Service to the ARO;
- (c) C: The candidate requested deferral, that is, consideration for processing for appointment at a later date;
- (d) D: The candidate declined further consideration for the position;
- (e) E: The candidate failed to complete the required documentation for the background investigation;
- (f) F: The candidate was determined to be unsuitable for appointment to the position on the basis of the background investigation only;

- (g) G: The candidate failed to report for the medical examination;
  - (h) H: The candidate failed to complete the medical examination;
  - (i) I: The candidate was determined to be unsuitable for appointment to the position on the basis of the medical examination only;
  - (j) J: The candidate was offered the position, but declined appointment to the position;
  - (k) K: The candidate was offered the position, but deferred appointment to the position to a later date;
  - (l) L: The candidate was appointed to the position;
  - (m) M: The candidate did not meet the minimum or maximum age, education or experience, or citizenship requirements for appointment to the position;
  - (n) N: The candidate was temporarily suspended from further processing because of pending criminal charges, or the possession of a suspended or revoked motor vehicle license, or charges to that effect; and
  - (o) O: Other circumstances not described above.
- 870.9 The ARO will establish a file for all of the candidates to be processed. Each file must contain the D.C. 2000 Employment Application and all other correspondence and documents concerning the processing of the candidate.
- 870.10 The ARO will review each D.C. 2000 Employment Application to ensure that the candidates meet the age and education or experience requirements. Candidates who would be older than the required maximum age, education, or experience requirement on the appropriate date will be informed in writing by the ARO of the reasons why they cannot be considered for a position.
- 870.11 The names of candidates who are excluded from consideration on the basis of the age, education, or experience review will be coded "M" in the "Disposition" column on the Certificate. These candidates will not be given any further consideration for positions filled from this Register.
- 870.12 Using information available on the D.C. 2000 Employment Application, the ARO will send all candidates not coded "M" a letter including an information packet. The letter will advise the candidates of the purpose of and the procedures for completing and returning all forms enclosed with the letter. The letter will also instruct candidates to bring with them original or notarized copies of their birth certificate, high school diploma or equivalency certificate, and D.D. 214 Forms, if applicable.

- 870.13 As needed because of unusual circumstances, the Director, D.C. Office of Personnel, may authorize telephone contacts of candidates to arrange expedited scheduling of medical examinations or other processing steps.
- 870.14 Candidates who do not respond to the letter within ten (10) workdays of the date of the letter will be sent a second (2<sup>nd</sup>) letter and enclosures, by certified mail. Candidates who do not respond to the certified letter within ten (10) workdays of the mailing date will be coded "A" or "B," as appropriate, in the "Disposition" column on the Certificate (see also section 870.8 (a) and (b) of this section). The names of these individuals will be placed at the bottom of the Register in position order following the name of the last candidate. The Director, D.C. Office of Personnel, will determine whether to consider such candidates, as specified in section 870.45 of this section.
- 870.15 The names of candidates who have indicated that they wish to be considered at a later date will be coded "C" in the "Disposition" column of the Certificate, and the specific date placed to the right of the code. These candidates may be processed on the date requested in order of their position on the Register if prior to that date, the Director, D.C. Office of Personnel, has not terminated the Register.
- 870.16 The names of candidates who have declined consideration for the position will be coded "D" in the "Disposition" column of the Certificate. Their names will be placed at the bottom of the Register in position order following the name of the last candidate. The Director, D.C. Office of Personnel, may approve their consideration at a later date. (See also section 870.8 (d) of this section).
- 870.17 Candidates will be notified by the ARO regarding the scheduling of the PAT required under section 870.5 of this section.
- 870.18 Candidates who successfully pass the PAT will report to the ARO as the initial step of the background investigation and suitability review process. Each candidate will bring an original or notarized copy of his or her birth certificate and high school diploma or equivalency certificate, as well as the D.D. 214 Form, if appropriate.
- 870.19 During the initial screening process, candidates will be provided the following forms and will be expected to complete them, after which the ARO will collect the forms:
- (a) A "Criminal History Request" form (P.D. 70);
  - (b) A "Record Check Request" form (P.D. 697); and
  - (c) A "Release of Information Waiver Authorization" form (P.D. 171).
- 870.20 The ARO will conduct the background investigation of those candidates who pass the PAT. The background investigation will be conducted prior to initial referral to a Suitability Board (Board) established by the Fire Chief in accordance with the requirements of this section, for a provisional determination of suitability. The background investigation will include all of the following elements:

- (a) A local investigation including the following checks:
  - (1) Criminal background check;
  - (2) Traffic record check;
  - (3) Warrant detail check;
  - (4) Morals Division check; and
  - (5) Central Names File check;
- (b) A report on the candidate from the Washington Area Law Enforcement System (WALES);
- (c) Department of Motor Vehicles reports from Maryland, Virginia, and the District of Columbia, as appropriate;
- (d) Out-of-state reports, when necessary, including the following:
  - (1) Department of Motor Vehicles reports;
  - (2) State police checks; and
  - (3) Local police checks;
- (e) Checking with present and at least one (1) former employer; and
- (f) Conducting a records check of military service.

870.21 The background investigation pursuant to section 870.20 of this section may be submitted to the Board for a provisional determination, prior to the receipt of the elements listed below in this subsection. The ARO is responsible for ensuring that this information is obtained within a reasonable amount of time following a provisional determination of suitability, and informing the Board or other appropriate agency management official in the event that any information is obtained that may reasonably affect the decision of the Board. The required elements are:

- (a) A report on the candidate from the Federal Bureau of Investigations (FBI) criminal history check;
- (b) At least three (3) personal reference checks; and
- (c) Checks with at least three (3) associates or friends of the candidate.

870.22 The files of candidates whose investigations under section 870.20 of this section have been completed will be transmitted to and reviewed by the Board.

- 870.23 The Board will be composed of three (3) uniformed members of the FEMSD at a rank no lower than that of Captain.
- 870.24 The presence of all three (3) members of the Board will constitute a quorum, and no action will be taken by the Board without a quorum present.
- 870.25 Decisions of the Board will be effected by majority vote. In making its determinations as to the suitability of a candidate for further consideration, the Board may use as reference material the guidelines found within the District Personnel Manual (DPM) (or any other procedural manual developed) and any other procedures issued by the Director, D.C. Office of Personnel.
- 870.26 The Board's findings and the reasons thereof on the suitability of a candidate will be recorded by the Board on a form expressly designed for this purpose.
- 870.27 The Fire Chief will establish procedures to ensure that candidates are acted upon by the Board in the same order as listed on the Certificate, except for candidates who are delayed in processing through no fault of the District government.
- 870.28 In the case of an unassembled examination, candidates will be selected based on rank qualification, and in accordance with the residency preference provisions of Chapter 3 of these regulations.
- 870.29 The Board has the authority to consider a variety of factors in determining a candidate's suitability for appointment, but may not consider juvenile records. The possession of one (1) or more of the following background characteristics may make a candidate ineligible for further processing and subsequent appointment:
- (a) A conviction for any felony;
  - (b) A conviction for any serious misdemeanor, including but not limited to petit larceny or sex offenses;
  - (c) Any record of having served a jail sentence; or
  - (d) An admission of drug abuse or reasonable grounds to believe that there has been drug abuse. Excessive use of marijuana would normally be disqualifying; however, each case will be considered individually, during which time all the relevant facts and circumstances will be evaluated before a final decision is made. As a general guide, excessive use may be defined as the use of marijuana on more than fifteen (15) occasions.
- 870.30 The following background variables will be closely reviewed by the Board and may be used to render a candidate ineligible for appointment:
- (a) All military discharges and the reasons for such discharges will be reviewed, including but not limited to performance, conduct, and medical records;

- (b) The circumstances surrounding a conviction or convictions for disorderly conduct will be reviewed and evaluated on a case-by-case basis;
  - (c) Other acts which would constitute a crime will be individually evaluated;
  - (d) Traffic records will be judged on an individual basis. A pattern of disregard for existing traffic regulations, particularly where the applicant has been convicted of driving under the influence of intoxicants or drugs, may result in the exclusion of the candidate from further processing.
- 870.31 Any material false statements, misrepresentations or omissions made during any phase of the application process will be the basis for disqualification of a candidate.
- 870.32 An applicant's file will be placed in a condition of temporary suspension from further processing for either of the following reasons:
- (a) The applicant has criminal charges pending; or
  - (b) The applicant's motor vehicle license has been suspended or revoked, or such action is pending.
- 870.33 The Board will return each candidate's files to the ARO with its recommendation as to whether the candidate should be determined suitable or unsuitable for further processing.
- 870.34 Based upon the Board's recommendation, the ARO will render a decision as to the suitability of each candidate for further processing. If the ARO does not concur with the decision of the Board, he or she will notify the Board and ask for reconsideration.
- 870.35 The names of candidates who have a suspended or revoked drivers license, or charges pending to that effect will be coded "N" on the Certificate by the ARO. (See section 870.8 (n) of this section). Depending upon the nature and seriousness of the charge, candidates who have criminal charges pending may be coded "N" on the Certificate by the ARO. The ARO will inform the candidates in writing of their temporary suspension from further processing, and will advise such candidates to notify the ARO when these impediments have been removed, as well as provide the ARO with appropriate evidence of such removal. Candidates will also be advised that they may be processed at the time of such notification if the Register has not been terminated prior to that date by the Director, D.C. Office of Personnel. These candidates would then be processed in order of their original position number on the Register.
- 870.36 The ARO will inform each candidate who has been deemed unsuitable, in writing, giving the candidate the reasons for the determination. In addition, each candidate will be informed that he or she may submit, within fifteen (15) workdays of the date of the letter informing the candidate of his or her unsuitability, a written request to the ARO to re-evaluate the facts that led to the determination.



- 870.37 When requests for review are received, the ARO will remand the background material to the Board for reconsideration. The ARO will inform the candidates in writing as to the final determination of suitability, including the basis for the determination, and that they may appeal the decision in writing to the Fire Chief (or his or her designee). The decision of the Fire Chief is final.
- 870.38 The names of candidates who failed to provide the required documentation for the background investigation will be coded "E" in the "Disposition" column of the Certificate. The names of those who have been determined to be unsuitable on the basis of the background investigation will be coded "F." These candidates will not be further considered for positions to be filled from the Register being used at the time. (See section 870.8 (e) and (f) of this section).
- 870.39 Upon completion, termination, or suspension from further processing, the ARO will transmit each candidate's file to the D.C. Office of Personnel.
- 870.40 Upon request, and for good reason, the ARO may allow a candidate who fails to report to or complete the medical examination one (1) additional opportunity to take or complete the medical examination.
- 870.41 The Police and Fire Clinic (PFC) will make the medical determination for each candidate and will inform the ARO of its determination in writing.
- 870.42 The ARO will inform the candidates who were medically disqualified by the PFC of the reasons for the disqualification, both orally and in writing. These candidates will also be advised that they may submit a written request asking that the ARO refer the case to the PFC for reconsideration. The request must be submitted within fifteen (15) days of receipt of the letter that informed them of their medical disqualification.
- 870.43 A code of "G" will be placed in the disposition column of the Certificate by the names of any candidate who failed to report for the medical examination after being given a second (2<sup>nd</sup>) opportunity; a code of "H" will be placed in the disposition column of the Certificate by the name of any candidate who failed to complete the medical examination after being given a second (2<sup>nd</sup>) opportunity; and a code of "I" will be placed in the disposition column of the Certificate by the name of any candidate deemed unsuitable on the basis of the medical examination. Candidates who have been coded "G," "H," or "I" will not be given further consideration for positions filled from the Register being used.
- 870.44 The Director, D.C. Office of Personnel, or the Fire Chief, may require candidates to complete an updated medical examination or background investigation if more than one hundred and twenty (120) days have elapsed between the date either the medical examination or background investigation were completed and the date of appointment.
- 870.45 Appropriate staff within the D.C. Office of Personnel will contact selectees in writing to tender offers of appointment. Every effort will be made to ensure that appointments are tendered in the order of original position on the Register, with the exception of variances caused by the occurrence of disposition categories "A," "B,"

“C,” “D,” “J,” “K,” and “N” (candidates placed within disposition categories “E,” “F,” “G,” “H,” “I,” and “M” would not be tendered an offer of appointment), and subject to processing delays not within the control of the FEMSD or the D.C. Office of Personnel. The selectees will be informed of all of the following:

- (a) That the selection is tentative pending completion of the background investigation, if applicable;
- (b) The components of the background investigation that have not been completed, if applicable;
- (c) That a report resulting in a determination of unsuitability will result in termination of employment;
- (d) Where and when to report for appointment; and
- (e) The procedures for declining or deferring the appointment.

- 870.46 Delays in processing caused by a candidate's action or inaction may result in the candidate being offered an appointment after other candidates who were initially placed in a lower position on the Certificate. Appropriate staff within the D.C. Office of Personnel will be responsible for documenting the reasons for all such offers of appointment, and for providing the Director, D.C. Office of Personnel, with such documentation upon request.
- 870.47 Appropriate staff within the D.C. Office of Personnel will prepare all candidate appointment forms for those candidates who have accepted offers of appointment and will secure the necessary signatures as specified on the forms. A code of “L” will be placed in the disposition column of the Certificate by the names of candidates who have been appointed.
- 870.48 A code of “J” will be placed in the disposition column of the Certificate by the names of candidates who have declined appointment. Their names will be placed at the bottom of the Register in position order following the name of the last candidate. The Director, D.C. Office of Personnel, may approve their consideration at a later date.
- 870.49 A code of “K” will be placed in the disposition column of the Certificate by the names of candidates who have requested deferral of their appointment, with the date indicated in the space to the right. These candidates may be appointed on the date requested in the order of their position on the Register if the Register has not been terminated by the Director, D.C. Office of Personnel, prior to this date.
- 870.50 Candidates whose requested deferral dates exceed thirty (30) days from the date of the original date of appointment may be subjected to an updated background investigation.
- 870.51 Appropriate staff within the D.C. Office of Personnel will provide the ARO with the names of the candidates who have accepted appointment, declined appointment, or

deferred appointment, so that the ARO may make the appropriate notations on the Certificate.

- 870.52 The ARO will return the Certificate to the D.C. Office of Personnel before requesting another Certificate.
- 870.53 When each name has been certified and the last Certificate returned to the D.C. Office of Personnel, the Director, D.C. Office of Personnel, will do either of the following:
- (a) Terminate the Register; or
  - (b) If there is a need for any entry-level Firefighter/EMT or Firefighter/Basic Paramedic to be hired, prior to the time that a new Register will be available, instruct the appropriate staff within the D.C. Office of Personnel to arrange for consideration of those candidates who are still eligible and have been placed at the bottom of the Register in accordance with this section, by the same procedure as was used with the candidates previously considered.

*Section 875 is amended to read as follows:*

**875 PROMOTION TO BATTALION FIRE CHIEF AND DEPUTY FIRE CHIEF**

- 875.1 Until September 30, 2007, promotion to Battalion Fire Chief will be accomplished in accordance with the following:
- (a) A Captain will be eligible for consideration for promotion to the rank of Battalion Fire Chief after having served as a Captain for a period of at least one (1) year;
  - (b) Whenever one (1) or more promotions are to be made to the rank of Battalion Fire Chief, the Fire Chief will submit to the Mayor a list of the names of all Captains eligible under section 875.1 (a) of this section, together with such other information as the Mayor may require;
  - (c) The Fire Chief will submit the final nomination of names to the Mayor for approval; and
  - (d) Each individual selected for promotion to Battalion Fire Chief must successfully complete a promotional medical examination by the Board of Police and Fire Surgeons in order to be promoted.
- 875.2 Until September 30, 2007, promotion to Deputy Fire Chief will be accomplished in accordance with the following:
- (a) Whenever one (1) or more promotions are to be made to the rank of Deputy Fire Chief, the Fire Chief will submit to the Mayor a list of the names of all Battalion Fire Chiefs, together with such other information as the Mayor may require;

- (b) The Fire Chief will submit the final nomination of names to the Mayor for approval; and
- (c) Each individual selected for promotion to Deputy Fire Chief must successfully complete a promotional medical examination by the Board of Police and Fire Surgeons in order to be promoted.

875.3 Section 2 (b) of the Omnibus Public Safety Agency Reform Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-402 (b)) (2005 Supp.), provides that the Fire Chief must establish criteria for Career Service promotions to Battalion Fire Chief and Deputy Fire Chief that addresses the areas of education, experience, physical fitness, and psychological fitness. The criteria established, which will become effective on October 1, 2007, are specified in sections 875.4 through 875.6 of this section.

875.4 Beginning on October 1, 2007, promotion to Battalion Fire Chief will be accomplished in accordance with the following:

- (a) A Captain will be eligible for consideration for promotion to the rank of Battalion Fire Chief after having served as Captain for at least one (1) year;
- (b) Each candidate must be certified to the Fire Officer II level in accordance with the standards of the National Fire Protection Association (NFPA), or equivalent, and must meet at least one (1) of the following three (3) educational and training requirements:
  - (1) Certification to Fire Officer III level in accordance with NFPA standards, or equivalent;
  - (2) A minimum of forty-five (45) semester hours of college level course work, with at least fifteen (15) semester hours in core subjects such as English composition, mathematics, and science, and the remainder in fire science or administration courses, or the equivalent of fire science or administration courses; or
  - (3) A minimum of thirty (30) hours toward certification as Fire Officer III in accordance with NFPA standards, or equivalent, with an additional fifteen (15) semester hours of college level course work in core subjects such as English composition, mathematics, and science.
- (c) A candidate hired after December 31, 1980 will be considered ineligible for consideration for promotion to the rank of Battalion Fire Chief if his or her record includes a suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.
- (d) Each candidate will be required to successfully complete a promotional physical at the time of selection.

875.5 Beginning on October 1, 2007, promotion to Deputy Fire Chief will be accomplished in accordance with the following:

- (a) A Battalion Fire Chief will be eligible for consideration for promotion to the rank of Deputy Fire Chief after having served as Battalion Fire Chief for at least one (1) year;
- (b) Each candidate must be certified to Fire Officer II level in accordance with the standards of the National Fire Protection Association (NFPA), or equivalent, and must meet at least one (1) of the following three (3) educational and training requirements:
  - (1) Certification to Fire Officer III level in accordance with NFPA standards, or equivalent;
  - (2) A minimum of forty-five (45) semester hours of college level course work, with at least fifteen (15) semester hours in core subjects such as English composition, mathematics, and science, and the remainder in fire science or administration courses, or the equivalent of fire science or administration courses; or
  - (3) A minimum of thirty (30) hours toward certification as Fire Officer III in accordance with NFPA standards, or equivalent, with an additional fifteen (15) semester hours of college level course work in core subjects such as English composition, mathematics, and science.
- (c) A candidate hired after December 31, 1980 will be considered ineligible for consideration for promotion to the rank of Deputy Fire Chief if his or her record includes a suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.
- (d) Each candidate will be required to successfully complete a promotional physical at the time of selection.

875.6 The selection process for the Battalion Fire Chief and Deputy Fire Chief is as follows:

- (a) The Fire Chief is authorized to select for promotion any of the members who meet the minimum qualification standards listed in sections 875.4 and 875.5 of this section.
- (b) The Fire Chief will submit the final nomination of names to the Mayor, together with any other information as the Mayor may require.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Director of Personnel, 441 4<sup>th</sup> Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

**D.C. OFFICE OF PERSONNEL****NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01 *et seq.*) (2001), and Section 2 (b) of the Omnibus Public Safety Agency Reform Amendment Act of 2004 (the "Act"), effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-402 (b)) (2005 Supp.), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following proposed rules. The Act requires that the Fire Chief establish criteria for Career Service promotions and Excepted Service appointments to Battalion Fire Chief and Deputy Fire Chief that addresses the areas of education, experience, physical fitness, and psychological fitness. Accordingly, these rules would add a new section 920 to Chapter 9, Excepted Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR), to add criteria for Excepted Service promotions to Battalion Fire Chief and Deputy Fire Chief in the Fire and Emergency Medical Services Department, as required under the Act. The criteria established shall become effective on October 1, 2007. Upon adoption, these rules will amend Chapter 9, Excepted Service, of Title of the DCMR, published at 32 DCR 2271 (April 26, 1985) and amended at 36 DCR 7931 (November 17, 1989), 39 DCR 6171 (August 21, 1992), 47 DCR 8093 (October 6, 2000), 50 DCR 4743 (June 13, 2003), 50 DCR 11076 (December 26, 2003), 51 DCR 10416 (November 12, 2004), and 51 DCR 10934 (November 26, 2004) – Errata Notice.

**CHAPTER 9****EXCEPTED SERVICE**

*A new section 920 is added to Chapter 9 of the D.C. Personnel Regulations, to read as follows:*

**920        PROMOTION TO BATTALION FIRE CHIEF AND DEPUTY FIRE  
CHIEF POSITIONS – FIRE AND EMERGENCY MEDICAL  
SERVICES DEPARTMENT**

920.1      Until September 30, 2007, promotion to Battalion Fire Chief will be accomplished in accordance with the following:

- (a) A Captain will be eligible for consideration for promotion to the rank of Battalion Fire Chief after having served as a Captain for a period of at least one (1) year;

- (b) Whenever one (1) or more promotions are to be made to the rank of Battalion Fire Chief, the Fire Chief will submit to the Mayor a list of the names of all Captains eligible under section 875.1 (a) of this section, together with such other information as the Mayor may require;
- (c) The Fire Chief will submit the final nomination of names to the Mayor for approval; and
- (d) Each individual selected for promotion to Battalion Fire Chief must successfully complete a promotional medical examination by the Board of Police and Fire Surgeons in order to be promoted.

920.2 Until September 30, 2007, promotion to Deputy Fire Chief will be accomplished in accordance with the following:

- (a) Whenever one (1) or more promotions are to be made to the rank of Deputy Fire Chief, the Fire Chief will submit to the Mayor a list of the names of all Battalion Fire Chiefs, together with such other information as the Mayor may require;
- (b) The Fire Chief will submit the final nomination of names to the Mayor for approval; and
- (c) Each individual selected for promotion to Deputy Fire Chief must successfully complete a promotional medical examination by the Board of Police and Fire Surgeons in order to be promoted.

920.3 Section 2 (b) of the Omnibus Public Safety Agency Reform Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-402 (b)) (2005 Supp.), provides that the Fire Chief must establish criteria for Excepted Service appointments to Battalion Fire Chief and Deputy Fire Chief that addresses the areas of education, experience, physical fitness, and psychological fitness. The criteria established, which will become effective on October 1, 2007, are specified in sections 920.4 through 920.6 of this section.

920.4 Beginning on October 1, 2007, promotion to Battalion Fire Chief will be accomplished in accordance with the following:

- (a) A Captain will be eligible for consideration for promotion to the rank of Battalion Fire Chief after having served as Captain for at least one (1) year;
- (b) Each candidate must be certified to the Fire Officer II level in accordance with the standards of the National Fire Protection

Association (NFPA), or equivalent, and must meet at least one (1) of the following three (3) educational and training requirements:

- (1) Certification to Fire Officer III level in accordance with NFPA standards, or equivalent;
  - (2) A minimum of forty-five (45) semester hours of college level course work, with at least fifteen (15) semester hours in core subjects such as English composition, mathematics, and science, and the remainder in fire science or administration courses, or the equivalent of fire science or administration courses; or
  - (3) A minimum of thirty (30) hours toward certification as Fire Officer III in accordance with NFPA standards, or equivalent, with an additional fifteen (15) semester hours of college level course work in core subjects such as English composition, mathematics, and science.
- (c) A candidate hired after December 31, 1980 will be considered ineligible for consideration for promotion to the rank of Battalion Fire Chief if his or her record includes a suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.
- (d) Each candidate will be required to successfully complete a promotional physical at the time of selection.

920.5 Beginning on October 1, 2007, promotion to Deputy Fire Chief will be accomplished in accordance with the following:

- (a) A Battalion Fire Chief will be eligible for consideration for promotion to the rank of Deputy Fire Chief after having served as Battalion Fire Chief for at least two (2) years;
- (b) Each candidate must be certified to Fire Officer II level in accordance with the standards of the National Fire Protection Association (NFPA), or equivalent, and must meet at least one (1) of the following three (3) educational and training requirements:
  - (1) Certification to Fire Officer III level in accordance with NFPA standards, or equivalent;
  - (2) A minimum of forty-five (45) semester hours of college level course work, with at least fifteen (15) semester hours in core subjects such as English composition, mathematics, and science,



and the remainder in fire science or administration courses, or the equivalent of fire science or administration courses; or

- (3) A minimum of thirty (30) hours toward certification as Fire Officer III in accordance with NFPA standards, or equivalent, with an additional fifteen (15) semester hours of college level course work in core subjects such as English composition, mathematics, and science.
- (c) A candidate hired after December 31, 1980 will be considered ineligible for consideration for promotion to the rank of Deputy Fire Chief if his or her record includes a suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.
- (d) Each candidate will be required to successfully complete a promotional physical at the time of selection.

920.6 The selection process for the Battalion Fire Chief and Deputy Fire Chief is as follows:

- (a) The Fire Chief is authorized to select for promotion any of the members who meet the minimum qualification standards listed in sections 920.4 and 920.5 of this section.
- (b) The Fire Chief will submit the final nomination of names to the Mayor, together with any other information as the Mayor may require.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Director of Personnel, 441 4<sup>th</sup> Street, N.W. Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the D.C. Register. Additional copies of these proposed regulations are available from the above address.

**D.C. OFFICE OF PERSONNEL****NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with the District of Columbia Military Retirement Equity Act of 2003 (Act), approved November 22, 2003 (P.L. 108-133; 117 Stat. 1386; D.C. Official Code § 5-704 (h)(2)(A) through (D)) (2005 Supp.), hereby gives notice of the intent to adopt the following proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Act provides that certain officers and members, and former officers and members, of the Metropolitan Police Department and Fire and Emergency Medical Services Department who have honorable active military service after December 31, 1956 ("post-1956 military service") performed before the date of separation on which their annuity entitlement is based, may elect to retain credit for the post-1956 military service, by paying a percentage of the amount of basic military pay received. The Act also provides for an "interest-free purchase period," and requires that the Mayor issue rules to explain the process to purchase post-1956 military service. A Notice of Emergency and Proposed Rulemaking implementing the provisions of the Act was published at 52 DCR 1592 (February 18, 2005). Comments on that notice were received from the Office of D.C. Pensions of the U.S. Department of the Treasury, and the District of Columbia Retirement Board. This rulemaking notice incorporates the comments received. These rules would add a new section 2620 to Chapter 26, Retirement, of Title 6 of the District of Columbia Municipal Regulations (DCMR), explaining the rules for the purchase of post-1956 military service pursuant to the Act; and update section 2600 of the chapter, Continuation of Retirement Benefits. Upon adoption, these rules will amend Chapter 26, Retirement, of Title 6 of the DCMR, published at 27 DCR 2223 (May 23, 1980) and amended at 37 DCR 954 (February 2, 1990) and 38 DCR 2130 (April 12, 1991).

**CHAPTER 26****RETIREMENT**

*Section 2600 is amended to read as follows:*

**2600 CONTINUATION OF RETIREMENT SYSTEMS**

- 2600.1 Section 2602 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-626.02) (2001) provides that the existing retirement systems, which include the Civil Service Retirement System (CSRS) (Chapter 83 of 5 U.S.C.), Teachers' Retirement System, Police and Fire Retirement System, Teachers Insurance and Annuity Association programs, and the Judges' Retirement System, continue to apply to all employees of the District government, except that the CSRS shall not be applicable to individuals first employed by the District government after September 30, 1987.

- 2620.5 For periods of military service performed after November 10, 1996, post-1956 military service contributions will be calculated at a rate equal to seven percent (7%) of the total basic military pay for members hired before November 10, 1996; and at a rate equal to eight percent (8%) of the total basic military pay for members hired after November 10, 1996.
- 2620.6 Active covered members are required to submit appropriate documentation, to be determined by the personnel authority, as proof of the amount of basic military pay received.
- 2620.7 If sufficient evidence is not provided to determine the basic military pay for post-1956 military service, such payment shall be based upon estimates obtained from the U.S. Secretary of Defense, Secretary of the U.S. Department of Transportation, Secretary of the U.S. Department of Commerce, or Secretary of the U.S. Department of Health and Human Services.
- 2620.8 All purchases of post-1956 military service retention credit must be completed prior to the later of October 1, 2006 or the covered member's date of retirement, in order for the covered member to retain credit for the military service.
- 2620.9 An active covered member hired on or before October 1, 2005 must purchase retention of credit for post-1956 military service on or before October 1, 2006 without accruing interest. All post-1956 military service purchased by such a covered member after October 1, 2006 will accrue interest.
- 2620.10 A covered member hired after October 1, 2005 will have twenty-four (24) months from the date of hire to purchase retention of credit for post-1956 military service without interest being charged. All post-1956 military service purchased by such a member after the end of the twenty-four month (24-month) period will accrue interest.
- 2620.11 The interest-free payment periods specified in sections 2620.9 and 2620.10 of this section are considered grace periods. The rate applicable in computing interest for post-1956 military service after the end of either of the grace periods shall be based on the total amount of the covered member's basic military pay, and shall cover the time period from the end of either grace period.
- 2620.12 Covered members may elect to purchase retention of credit for post-1956 military service by paying a lump sum or through payroll deductions.
- 2620.13 A covered member who elects to purchase retention of credit for post-1956 military service may purchase all of the service that covers a specified continuous period of post-1956 military service.
- 2620.14 Payments made for purchase of retention credit for post-1956 military service shall not be refunded except upon separation from police or fire service for reasons other

than retirement. A covered member with less than five (5) years of police or fire service who is separated from the MPD or FEMSD for reasons other than retirement shall be refunded the amount of any lump sum payment and payroll deductions made from his or her salary, including any amounts paid or deducted for purchase of retention credit for post-1956 military service. A covered member with more than five (5) years of police or fire service may, at his or her election, receive a refund, or leave any such payments and payroll deductions in his or her account as a deferred annuity. The receipt of a refund of such payments or deductions shall void all annuity rights.

2620.15 The Director, D.C. Office of Personnel, will develop procedures to implement the provisions of the Act, and publish the procedures in the District Personnel Manual. At a minimum, the procedures shall provide guidance concerning:

- (a) Which members and officers are eligible to purchase and retain post-1956 military service;
- (b) Instructions for the payment of post-1956 military service; and
- (c) Any forms to be completed, and documentation to be submitted, as proof of post-1956 military service.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Director of Personnel, 441 4<sup>th</sup> Street, N.W., Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., SUITE 200, WEST TOWER  
WASHINGTON, DC 20005**

**NOTICE OF PROPOSED RULEMAKING**

**ET00-2, IN THE MATTER OF POTOMAC ELECTRIC POWER COMPANY'S  
PUBLIC SPACE OCCUPANCY SURCHARGE ELECTRICITY TARIFF, P.S.C.-  
D.C. No. 1**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,<sup>1</sup> of its intent to act upon the Compliance Filing of Potomac Electric Power Company ("PEPCO")<sup>2</sup> in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. Pursuant to D.C. Code Section 10-1141.6,<sup>3</sup> PEPCO filed with the Commission an updated Public Space Occupancy Surcharge Rider ("PSOS") on January 26, 2006.<sup>4</sup> In the tariff filing, PEPCO shows the process to be used to recover from its customers the D.C. Public Rights-of-Way fees paid by PEPCO to the District Columbia Government.

**ELECTRICITY TARIFF, P.S.C.-D.C. No. 1  
27th Revised Page No. R-1  
27th Revised Page No. R-2  
20th Revised Page No. R-2.1  
7th Revised Page No. R-33**

3. In its filing, PEPCO indicates that the revised PSOS supports calculations for a decrease in the surcharge rate by 3.1 percent.<sup>5</sup> In addition, PEPCO states that its

<sup>1</sup> D. C. Code, 2001 Ed. § 2-505.

<sup>2</sup> ET00-2, *In The Matter Of Potomac Electric Power Company's Public Space Occupancy Surcharge Electricity Tariff, P.S.C.-D.C. No. 1*, ("ET00-2") Compliance Filing of Potomac Electric Power Company, ("Compliance Filing"), filed January 26, 2006.

<sup>3</sup> D.C. Code, 2001 Ed. § 10-1141.06, states that "Each public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement."

<sup>4</sup> ET00-2, Compliance Filing, filed January 26, 2006.

<sup>5</sup> *Id.* at 2.

revised Rights-of-Way surcharge will become effective with meter readings on or after March 1, 2006.<sup>6</sup>

4. This Compliance Filing may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the tariff pages are available upon request, at a per-page reproduction cost.

5. Comments on the tariff filing must be made in writing to Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within 30 days of the date of publication of this NOPR in the *D.C. Register*. Persons wishing to file reply comments may do so no later than 45 days of the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply comment periods have expired, the Commission will take final rulemaking action on PEPCO's filing. The Commission does not intend to prevent the Company from implementing its filed surcharges. However, if the Commission discovers any inaccuracies, PEPCO could be subject to reconciliation of the surcharges.

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<sup>6</sup>*Id.* at 1.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
REVISED NOTICE OF PROPOSED RULEMAKING**

**Case No. 02-06**

**(Text Amendments to the Neighborhood Commercial Overlay District:  
Limitation on Eating or Drinking Establishments)**

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01), hereby gives notice of the intent to adopt amendments to Chapter 13 of the Zoning Regulations (11 DCMR) Neighborhood Commercial Overlay District. This amendment responds to application processing concerns brought to Zoning Commission's attention by the Zoning Administrator and the Department of Consumer and Regulatory Affairs. It is intended to provide uniform procedures for determining linear street frontage usage by eating and drinking establishments in the Neighborhood Commercial Overlay Districts.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 11 DCMR Zoning, chapter 13, Neighborhood Commercial Overlay District, subsection 1302.5 is amended as follows (additions to the existing text are shown in bold and underlined. Deletions in strikethrough):

A. The introductory text is amended to read as follows:

1302.5       ~~Restaurants, fast food restaurants, delicatessens, carry-outs, and similar eating or drinking establishments~~ **An establishment that is required to obtain either a Basic Business License with a Public Health Food Establishment Restaurant Endorsement or a CR or DR Restaurant, CT or DT Tavern, or CN or DN Nightclub Alcohol Beverage License shall be subject to the following limitations (and shall hereinafter be referred to as an "eating or drinking establishment"):**

B. The existing text of subparagraph (b) is redesignated as subparagraph (g) and amended to read as follows:

(g)       Except for a fast food restaurant, such uses may be applied to fulfill the requirements of § 1302.4; provided, that when such uses are so applied, they shall remain subject to the provisions of paragraphs (a)-(f) of this subsection.

C. By adding new subsections (b) through (f) to read as follows:

(b)       The linear street frontage of each designated roadway shall be based upon the certified and recorded plats in the Office of the Surveyor, measured to

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the Zone District Boundary line of each commercial zone district within the overlay;

- (c) The total linear street frontage of eating or drinking establishments shall be based on the existing licensing records of the Department of Consumer and Regulatory Affairs and the Alcohol Beverage Regulation Administration by address;
- (d) If an eating or drinking establishment occupies all or part of the ground floor level of a corner lot facing two or more designated roadways, the linear street frontage for each designated roadway shall be included for purposes of determining compliance with § 1302.5(a);
- (e) If the measurement of linear street frontage occupied by eating and drinking establishments is not updated within six (6) months after [THE EFFECTIVE DATE OF THIS AMENDMENT], or is not updated at least every twelve-months thereafter, it shall be assumed that the linear street frontage occupied by eating and drinking establishments exceeds the applicable percentage limitation, until a subsequent update indicates otherwise;
- (f) Compliance with the requirements of this section shall be determined at the time when a building permit is applied for and shall not be revisited when an application for a subsequent certificate of occupancy is made.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon S. Schellin Acting Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> Street, N.W., Washington D.C. 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. A copy of this proposal may be obtained, at cost, by writing to the above address.



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF PROPOSED RULEMAKING**  
**ZC CASE NO. 04-18**  
**(Map and Text Amendment – Mount Vernon District within the DD Overlay)**

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 and 6-641.07 (2001)), hereby gives notice of its intent to amend Chapter 17 of the Zoning Regulations (Title 11 DCMR) to establish a new sub-area within the DD Overlay, to be known as the Mount Vernon Triangle District. The District consists of those portions of Squares 451, 483, 484, 484W, 515 and 516 that are within seventy-two feet (72 feet) of the rights of way on each side of K Street or 5<sup>th</sup> Street, Northwest, as shown on Attachment 1 to the Office of Planning Report dated July 9, 2004. Because Square 483 is not presently mapped in the DD Overlay, and the adjacent Squares are, the Zoning Commission proposes to amend the Zoning Map to rezone 483 from C-3-C to DD/C-3-C.

Proposed § 1732 divides the Mount Vernon District into three areas for the purpose of identifying the specific types of uses that may be allowed on the ground floors of buildings within each area. Because of concerns that it might be initially difficult to attract several of these uses, the Commission originally advertised provisions that permitted other uses on an interim basis. However, the trigger mechanism for terminating such uses proved to be cumbersome. At proposed action, the Commission decided to defer, until final action, the questions of whether interim uses should be permitted, if so, should the uses be permitted by right or by special exception, if the latter, what standards should be used to decide whether to grant an application, and, finally, how long should such uses be permitted.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

A. The Zoning Map of the District of Columbia, as incorporated by reference in 11 DCMR § 106, is amended by rezoning Square 483 from C-3-C to DD/C-3-C.

B. Title 11 DCMR (Zoning) is proposed to be amended as follows:

**1720 MOUNT VERNON TRIANGLE DISTRICT: OBJECTIVES AND BOUNDARIES (DD/MVT)**

1720.1 The principal objectives for the Mount Vernon Triangle District (MVT District) are to:

- (a) Promote the development of ground floor level street frontages that will be active and pedestrian-friendly, particularly along the sections of K and 5<sup>th</sup> Streets, Northwest that are within the MVT District boundaries, as defined in §1720.2.

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- (b) Promote a lively, mixed-use and high density Mount Vernon Triangle neighborhood with neighborhood amenities and retail development that serves the MVT as well as nearby neighborhoods, the Convention Center, and the downtown.

1720.2 The provisions of the MVT District, as stated in §§ 1720 through 1734, apply to Squares 451, 483, 484, 484W, 515 and 516.

1720.3 Any reference in the provisions of the MVT District to the Mount Vernon Triangle Area shall mean the area comprising squares 451, 483, 484, 484W, 515, 515N, 516, 516S, 525, 526, 527, 528, 556, 558, 560, 561, 562, 563, and 563S.

1720.4 All street locations in the MVT District are in Northwest Washington and therefore all future reference to these streets will omit the identification of the Northwest quadrant.

1720.5 All provisions of this Chapter shall apply unless otherwise noted.

1720.6 Unless specifically exempted, the requirement of the MVT District shall apply to all new buildings and to all other buildings where any additions, alterations, or repairs within any twelve-month (12) period exceed one hundred percent (100%) of the assessed value of the building as set forth in the records of the Office of Tax and Revenue as of the date of the building permit application; provided:

- (a) The cost basis for alterations or additions to an existing building shall be the amount indicated by the applicant on the application for a building permit;
- (b) The assessed value of the building shall be the value set forth in records of the Office of Tax and Revenue as of the date of the building permit application; and
- (c) In the case of an addition, the requirements and incentives of this chapter apply only to the addition.

**1721 OFFICE OF PLANNING REVIEW (DD/MVT)**

1721.1 The provisions of § 1700.6 shall apply only to building permits for new construction within the MVT District or for additions, alterations, or repairs that would first subject a building to the provisions of the MVT District pursuant to § 1720.6.

1721.2 The Zoning Administrator shall take no action on the building permit application for seventy-five (75) days from the date of filing, or for fifteen (15) days after receipt of the Office of Planning report, whichever time period is less.

**1722 STREETWALL DESIGN REQUIREMENTS (DD/MVT)**

1722.1 Except for a building located in the Principal Intersection Area, as described in § 1723.1, a building located in Square 515 Lot 158 for which a building permit has been received within 9 months prior to or after [the effective date of this section], or any portions of a building that existed on the [effective date of this section] that is subsequently designated a historic landmark or is included within a historic district, this section together with § 1701.3, shall apply to each building with frontage on:

- (a) K Street in Squares 451, 483, 484, 484W, 515 or 516;
- (b) 5<sup>th</sup> Street in Squares 483, 484, 515 or 516;
- (c) 6<sup>th</sup> Street in Squares 484 or 484W if that frontage is within thirty-six feet (36 ft.) of the right-of way of K Street; and
- (d) 4<sup>th</sup> Street in Square 515 or 516 if that frontage is within thirty-six feet (36 ft.) of the right-of way of K Street.

1722.2 Each building on a lot that fronts on a pedestrian street shall devote not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building to display windows with clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building.

1722.3 Each building on a lot that fronts on a pedestrian street shall devote not less than percent (50%) of the surface area of the streetwall between twelve feet (12 feet) and fourteen feet (14 feet) above grade to clear or clear/low-emissivity glass.

1722.4 Each building shall be designed so as not to preclude an entrance every forty feet (40 ft.) on average for the linear frontage of the building; excluding vehicular entrances, but including entrance to ground floor uses and any main lobby.

1722.5 The ground floor level of each new building or building addition shall have a minimum clear floor-to-ceiling height of fourteen feet (14 ft.) for a distance of at least thirty-six feet (36 ft.) perpendicular to the ground floor's front building line.

**1723 PRINCIPAL INTERSECTION AREA (PIA): LOCATIONS INCLUDED (DD/MVT)**

1723.1 With the exception of a building located in Square 515 Lot 158 for which a building permit has been received within 9 months prior to or after [the effective date of this section], or any portion of a building that existed on the effective date of this section] that is subsequently designated a historic landmark or is included

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within a historic district, the provisions of §§ 1723 through 1727 shall apply to those portions of buildings in Squares 483, 484, 515 or 516 that:

- (a) Front on K Street or 5<sup>th</sup> Street; and
- (b) Fall within any of four (4) seventy-two foot square (72 foot by 72 foot) areas as measured from the point of tangency of the rights of way lines of K Street and 5<sup>th</sup> Street in the relevant quadrant described by the intersection of these streets.

1723.2 The area described in 1723.1 shall hereafter be referred to as the Principal Intersection Area (PIA).

1723.3 As illustrated in the following table, each of the four corners within the PIA has four (4) thirty-six foot by thirty-six foot (36 foot by 36 foot) modules.

Square 483	Square 483		5th Street	Square 515		Square 515
	<u>D</u>	<u>B</u>		<u>B</u>	<u>D</u>	
	<u>C</u>	<u>A</u> (NW)		<u>A</u> (NE)	<u>C</u>	
K Street			Intersection 5th & K Streets	K Street		
Square 484	C	A (SW)	5th Street	(SE) A	<u>C</u>	Square 516
	<u>D</u>	<u>B</u>		<u>B</u>	<u>D</u>	
	Square 484			Square 516		

1723.4 In the table, "K Street" defines the east and west directions; "5<sup>th</sup> Street" defines the north and south directions. The northwest corner is Square 483; the northeast corner is Square 515; the southwest corner is Square 484; the southeast corner is Square 516.

1723.5 At each corner there are four modules labeled A, B, C and D. Each block in the chart labeled A, B, C, or D represents a 36-foot by 36-foot area within the respective 72-foot by 72-foot PIA corner.

1723.6 The "A" modules are the thirty-six foot by thirty-six foot squares nearest to the intersections. The "B" modules are the thirty-six by thirty-six foot squares fronting on 5<sup>th</sup> Street, that are between thirty-six and seventy two feet north and south of K Street. The "C" modules are the thirty-six foot by thirty-six foot squares fronting on K Street that are between thirty-six and seventy two feet east and west of 5<sup>th</sup> Street. The "D" modules are the thirty-six foot by thirty-six foot interior squares that have frontage on neither K Street nor 5<sup>th</sup> Street.

1724 **PIA: MAXIMUM BUILDING HEIGHT (DD/MVT)**

1724.1 Except for buildings in Square 515, the portion of a building in an "A" module shall be no higher than fifty feet (50 feet) above grade.

1724.2 No more than fifty percent (50%) of the portions of a building in each of the "B" and "C" modules shall be more than fifty feet (50 feet) above grade.

1725 **PIA: MINIMUM GROUND FLOOR HEIGHT (DD/MVT)**

1725.1 The following minimum ground floor height requirements apply to each building located within the PIA:

Module height	Minimum clear floor-to-ceiling
A	22 Feet
B & C ground floor	22 Feet for at least 50% of its
D	14 Feet

1726 **PIA: STREETWALL DESIGN (DD/MVT)**

1726.1 Each building shall devote not less than sixty-five percent (65%) of the surface area of the streetwall(s) at the ground level, to a height of at least twenty-two feet (22 feet), to display windows with clear/low-emissivity glass, except for decorative or architectural accent and entrances to commercial uses or to the building.

1726.2 Each building shall devote not less than sixty-five percent (65%) of the surface area of the streetwall between eighteen feet (18 feet) and twenty-two feet (22 feet) above grade to clear/low-emissivity glass.

**1727 PIA: MISCELANEOUS PROVISIONS (DD/MVT)**

- 1727.1 There shall be no direct entrances to lobbies serving residential or office uses.
- 1727.2 Roof terraces, whether open to the sky or covered with awnings or canopies, that are atop the "A", "B" or "C" portions of a building, as defined in § 1723, shall not be included in the maximum floor area ratio calculations as set forth in § 771.2.

**1728 REDUCTION OF REAR YARDS AND SIDE YARDS OF BUILDINGS ABUTTING ALLEYS (DD/MVT)**

- 1728.1 In the event that the Council of the District of Columbia accepts a dedication for public alley purposes of land within DD/MVT that would have been required to be a rear yard pursuant to § 774.7, and the land dedicated is adjacent to a public alley and extends the entire length of the lot, the rear yard requirements for the portion of the structure above the horizontal plane described in § 774.7(a) shall be reduced by five feet (5 ft.) for every ten-foot (10 ft.) depth of land dedicated.
- 1728.2 For the purposes of § 1728.1, the depth of the land dedicated shall be measured perpendicular to the alignment of the adjacent public alley.
- 1728.3 In the event that the Council of the District of Columbia accepts a dedication for public alley purposes of land within DD/MVT that would have been required to be a side yard pursuant to §§ 775.4 and 775.5, and the land dedicated is at least eight (8) feet deep, is adjacent to a public alley, and extends the entire length of the lot, the side yard requirement shall be eliminated for that portion of the structure below a horizontal plane twenty (20) feet above the mean finished grade at the middle of the side of the structure.

**1729 GROUND FLOOR PARKING AND LOADING PROVISIONS (DD/MVT)**

- 1729.1 Where a court is provided in accordance with § 776, and the surface of the court begins at or between the first floor and second floor above the ground floor, the gross floor area beneath the surface of the court shall not be included when calculating the floor area ratio of the building, provided:
- (a) The area immediately beneath the court provides:
    - (i) Vehicular access from a public or private alley for the purposes of providing loading berths, loading platforms, or service/delivery loading spaces required by § 2201.1;
    - (ii) Parking or access to parking required by § 2101.1; or

(iii) Parking permitted by § 1702.7(a) or (b); and

(b) At least sixty five percent (65%) of the court's surface is covered by vegetative material that reduces the rate of flow of stormwater run-off or contributes less to ambient heat build-up than a conventional roof.

**1730 DRIVEWAYS ON PREFERRED USE STREET FRONTAGES. (DD/MVT)**

1730.1 The provisions of this section govern the construction of driveways that:

- (a) Provide access from the adjacent public street to parking spaces or loading berths;
- (b) Serve delivery loading spaces on the subject lot; or
- (c) Serve parking spaces, loading berths, or service/delivery loading spaces not required by the Zoning Regulations.

1730.2 No driveway may be constructed on the north or south side of K Street between 5th Street and 7th Street.

1730.3 There shall be no more than one driveway constructed in the following areas:

- (a) The north side of K Street between 4th Street and 5th Street;
- (b) The south side of K Street between 4th Street and an alley [existing on the effective date of this section] located approximately three hundred fifty feet (350') west of 4th Street;
- (c) The east side of 5th Street between I Street and K Street; and
- (d) The east side of 5th Street between K Street and L Street.

1730.4 There shall be no more than two driveways constructed in the following areas:

- (a) The west side of 5th Street between I Street and K Street; and
- (b) The west side of 5th Street between K Street and L Street.

1730.5 Exceptions from the prohibitions and limitations of this section shall be permitted if granted by the Board of Zoning Adjustment under § 3104, provided the applicant demonstrates that:

- (a) There is no practical alternative means of serving the parking, loading or drop-off needs of the building to be served by the proposed driveway, such as signage approved by the District Department of Transportation

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(DDOT) that would direct vehicles to an alternative entrance point within the same Square;

- (b) The driveway will not impede the flow of pedestrian traffic on the street frontages listed in §§ 1730.2 to 1730.4; and
- (c) The proposed driveway is not inconsistent with the DDOT landscape plans for the public rights of way in the Mount Vernon Triangle Area, to the extent that such plans exist at the time of the special exception application.

**1731 DRIVEWAYS: OTHER STREET FRONTAGES (DD/MVT)**

1731.1 The provisions of this section apply to street frontages in DD/MVT not listed in §1730.

1731.2 The provisions of this section apply to driveways that provide access from the adjacent public street to parking spaces or loading berths within a square, whether or not those spaces or berths are required by the Zoning Regulations.

1731.3 No more than one driveway may be constructed within the length of an individual building, unless the building extends the entire length of the block, in which case § 1731.4 shall apply.

1731.4 No more than two driveways may be constructed per block-face.

1731.5 Each driveway shall be separated by no less than sixty feet (60 feet), unless lesser distances between curb cuts are required by the District Department of Transportation (DDOT).

1731.6 Exceptions from the requirements of this section shall be permitted only if granted by the Board of Zoning Adjustment under § 3104, provided that the applicant demonstrates that:

- (a) There is no practical alternative means of serving the parking, loading or drop-off needs of the building to be served by the proposed driveway, such as signage approved by the District Department of Transportation (DDOT) that would direct vehicles to an alternative entrance point within the same Square;
- (b) The driveway will not impede the flow of pedestrian traffic on the street frontages listed in §§ 1730.2 through 1730.4; and
- (c) The proposed driveway is not inconsistent with the DDOT landscape plans for the public rights of way in the Mount Vernon Triangle Area, to the extent that such plans exist at the time of the special exception application.



**1732 PERMITTED GROUND FLOOR USES (DD/MVT)**

**1732.1** For the purposes of identifying the location of permitted ground floor uses, the Mount Vernon Triangle District is divided into the following three Areas:

- (a) The Principal Intersection Area as defined in § 1723.1.
- (b) The Secondary Use Area, which comprises the areas with frontage along the portions of Square 515 and 516 between the centerpoint of 4<sup>th</sup> Street and the centerpoint of the public alley in Square 515 existing on [the effective date of this section] that is approximately three hundred sixty feet (360 feet) west of 4<sup>th</sup> Street.
- (c) The Primary Use Area, which comprises all areas not defined in § 1732.1 (a) or (b) with frontages along K Street in Squares 451, 483, 484, 484W, 515 or Square 516; or with frontages on 5<sup>th</sup> Street in Squares 483, 484, 515 or 516.

**1732.2** The following uses may be established and continued on a permanent basis on the ground floor of any building located in the Primary or Secondary Use Area and, on an interim basis on the ground floor of any building located in the PIA [SEE BRAKETED TEXT IN 1733.1]:

- (a) Antique Store;
- (b) Artist Live-Work Space or Artist Studio, with Sales;
- (c) Apparel and Accessories Store;
- (d) Art Center;
- (e) Art Gallery;
- (f) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking;
- (g) Arts Services, including set design and restoration of artworks;
- (h) Assembly Hall, Auditorium, Public Hall or Other Performing Arts Space, including rehearsal/pre-production space or concert hall;
- (i) Auction House;
- (j) Bakery, limited to baking of food sold on premises;
- (k) Bicycle Shop;
- (l) Barber or Beauty Shop;
- (m) Blueprinting, Printing or Copy Service;
- (n) Book Store;
- (o) Cabaret;
- (p) Candy Store;
- (q) Clinic;
- (r) Computer Store;
- (s) Concert Hall or other Performing Arts Space;
- (t) Cosmetic Store;
- (u) Camera Store;
- (v) Craftsman or artisan studio, with sales;

- (w) Dance Hall, Discotheque, or Ballroom;
- (x) Department Store;
- (y) Dinner Theater;
- (z) Dressmaking or Tailor Shop;
- (aa) Drinking Place, including bar, nightclub or cocktail;
- (bb) Drug Store;
- (cc) Dry Cleaner;
- (dd) Fabric Store;
- (ee) Fast Food Restaurant, excluding drive-through;
- (ff) Film exchange;
- (gg) Florist and Plant Store;
- (hh) Furniture Store;
- (ii) Gift, Novelty, and Souvenir Shop;
- (jj) Grocery Store;
- (kk) Hardware Store;
- (ll) Health or Exercise Studio;
- (mm) Hobby, Toys and Game Shop;
- (nn) Home Furnishing Store;
- (oo) Home Supply and Decorating Store;
- (pp) Jewelry Store;
- (qq) Liquor Store (subject to a public hearing);
- (rr) Leather Goods and Luggage Store;
- (ss) Legitimate Theater;
- (tt) Library, Public;
- (uu) Lobbies for Apartment, Condominium or Other Residential Uses;
- (vv) Movie Theater;
- (ww) Museum;
- (xx) Musical Instruments and Accessories Sales;
- (yy) Newsstand;
- (zz) Office Supplies and Equipment Sales;
- (aaa) Optical Goods Store;
- (bbb) Paint Store;
- (ccc) Pet Store;
- (ddd) Picture Framing Studio or Shop;
- (eee) Printing, Fast Copy Service;
- (fff) Radio, Television, and Consumer Electronics Store;
- (ggg) Restaurant
- (hhh) Secondhand Store or Consignment Shop;
- (iii) Shoe Repair and Shoeshine Parlor;
- (jjj) Shoe Store;
- (kkk) Specialty Food Store;
- (lll) Sporting Goods Store;
- (mmm) Telegraph Office;
- (nnn) Television and Radio Broadcast Studio
- (ooo) Theater, including Motion Picture Theater
- (ppp) Tobacco Store;

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- (qqq) Travel Agency, Ticket Office;
- (rrr) Variety Store;
- (sss) Video Tape Rental; and;
- (ttt) Other similar personal/consumer service establishment or retail use including assemblage and repair clearly incidental to the principal use.

1732.3 The following uses may be established and continued on a permanent basis on the ground floor of any building located in the Secondary Use Areas defined in §1732.1 and on an interim basis on the ground floor of any building located in the Primary or Principal Intersection Areas [SEE BRAKETED TEXT IN 1733.1]:

- (a) Accountant;
- (b) Apartment or Condominium Entered Directly From Street;
- (c) Architect;
- (d) Attorney;
- (e) Bail Bondsman;
- (f) Bank, Loan Office, or Financial Institution;
- (g) Counseling Service;
- (h) Consultant - General;
- (i) Dentist, Doctor, or Medical Office;
- (j) Employment Agency;
- (k) Escrow Agent;
- (l) Government;
- (m) General office uses:
- (n) Health Clinic;
- (o) Insurance Broker;
- (p) Laboratory;
- (q) Landscape Architect;
- (r) Mortgage Broker;
- (s) Public Agency Office;
- (t) Real Estate Agent, Appraiser, Broker, Developer;
- (u) Social Service Agency Office;
- (v) Stockbroker;
- (w) Tax Preparer;
- (x) Title Company;
- (y) Trust Company; and
- (z) Utility Company, Offices of.

1732.4 The following uses may be established and continued on a permanent basis on the ground floor of any building located in any of the three Areas defined in §1732.1:

- (a) Book Store including restaurant;
- (b) Cabaret;
- (c) Drinking Place, including bar, nightclub or cocktail lounge;
- (d) Restaurant; and

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- (e) Other uses permitted on a permanent basis in the Principal Intersection Area, provided that within such uses there exists accessory Restaurant or Drinking Place uses, including, but not limited to, bar, nightclub or cocktail uses, that occupy at least fifty percent (50%) of the gross floor area of the permitted principal use(s) and at least 40% of the permitted principal use(s) linear frontage on the public right of way.

**1733 INTERIM USES (DD/MVT)**

- 1733.1 The interim uses specified in § 1732.2 may be permitted in the PIA, and the interim uses specified in Section 1732.3 may be permitted in the Primary Area or the PIA [THROUGH A MECHANISM TO BE DETERMINED BY THE ZONING COMMISSION AT FINAL ACTION. IN THE EVENT THAT THE ZONING COMMISSION DETERMINES NOT TO PERMIT INTERIM USES, THIS SECTION, AND THE REFERENCES TO INTERIM USES IN §§ 1732.2 AND 1733.3 WILL BE ELIMINATED FROM THE FINAL TEXT]

**1734 GROUND FLOOR AREAS REQUIRED TO BE DEVOTED TO PREFERRED USES (DD/MVT)**

- 1734.1 The provisions of this section apply to each building with frontage on K Street in Squares 451, 483, 484, 484W, 515 or 516; and to each building with frontage on 5<sup>th</sup> Street in Squares 483, 484, 515 or 516.
- 1734.2 Each building that faces or abuts a street segment identified in § 1732.1 shall devote not less than fifty percent (50%) of the gross floor area of the ground floor ("dedicated space") to uses listed in §§ 1732.2, 1732.3, or 1732.4), if permitted by those subsections at its location, except that the cumulative gross floor area of bank, loan office, financial institution or general office uses, shall occupy no more than thirty percent (30%) of the gross floor area of the dedicated space.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Acting Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> Street, N.W., Washington D.C. 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. A copy of this proposal may be obtained, at cost, by writing to the above address.